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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

COMPASS BANK, an Alabama Corporation,

Plaintiff,

v.

CHRIS M. PETERSON, an individual;
CAROLINA L. PETERSEN, an individual;
CP FINANCIAL AND CP REALTY, INC.,
a California Corporation; THE STRUNZO
DEVELOPMENT CORPORATION OF
CALIFORNIA aka STRUNZO
DEVELOPMENT CORPORATION, a
California Corporation; and Does 1 through
10, inclusive,

Defendants.

CASE NO: ED CV 11 - 00871 VAP
(DTBx)
Related Case EDCV 11-01201 VAP (OPx)
Honorable Virginia A Phillips
Courtroom 2

**STATEMENT OF
UNCONTROVERTED FACTS IN
SUPPORT OF DEFENDANT, THE
STRUNZO DEVELOPMENT
CORPORATION OF CALIFORNIA
AKA STRUNZO DEVELOPMENT
CORPORATION'S MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: July 9, 2012
Time: 2:00 p.m.
Courtroom: 2

Pursuant to Local Rule 56-1, Defendant, The Strunzo Development Corporation of California aka Strunzo Development Corporation, submits this "Statement of Uncontroverted Facts" in support of its Motion for Summary Judgment against Plaintiff, Compass Bank.

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UNCONTROVERTED FACT**EVIDENCE****FACT NO. 1****SUPPORTING EVIDENCE**

Defendants Christopher M. Petersen and Carolina L. Petersen ("Petersens") were the owners of real property commonly known as 27311 Peninsula Drive, Lake Arrowhead, California ("the Property").

First Amended Complaint ("FAC"), Paragraphs 12 and 13.

FACT NO. 2**SUPPORTING EVIDENCE**

The Petersens encumbered the Property with a deed of trust ("the CP DOT") as security for a loan to Christopher Petersen of \$1,760,200). ("CP loan").

FAC, Paragraph 12.

FACT NO. 3**SUPPORTING EVIDENCE**

The CP DOT was recorded in the San Bernardino County Recorder's Office on October 31, 2007, and shows that the "Lender" listed thereon is "CP Financial and CP Realty, Inc." ("CP"), the Trustee is listed as "Stewart Title of California, Inc." ("Stewart Title"), and the Beneficiary is listed as Mortgage Electronic Registration Systems, Inc. ("MERS").

FAC, Paragraph 12 and Exhibit "I" thereto; and Exhibit "3" to Declaration of Lore Hilburg in Support of Motion of Defendant The Strunzo Development Corporation of California ("Strunzo") for Summary Judgment ("Hilburg Declaration").

FACT NO. 4

No assignment of the beneficial interest of the CP DOT was ever recorded until the assignment of the beneficial interest from MERS to Plaintiff, which was recorded on February 11, 2011.

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraphs 21(e) and 22 and Exhibit "7" thereto.

FACT NO. 5

On May 12, 2009, a Substitution of Trustee ("2009 Substitution of Trustee") was recorded purporting to substitute Recontrust Company in place of Stewart Title as trustee on the CP DOT. On the same day, a Notice of Trustee's Sale ("2009 Notice of Trustee's Sale") was recorded in connection with the CP DOT.

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraph 21(b) and (c) and Exhibits "4" and "5" thereto.

FACT NO. 6

At no time was a Trustee's Deed Upon Sale recorded based on the 2009 Notice of Trustee's Sale.

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraph 32.

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FACT NO. 7

On May 18, 2010, CP executed and recorded a Substitution of Trustee and Full Reconveyance of the CP DOT ("2010 Substitution of Trustee and Full Reconveyance").

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraph 21(d) and Exhibit "6" thereto.

FACT NO. 8

After the 2010 Substitution of Trustee and Full Reconveyance was recorded, defendant Strunzo made a loan to defendants Petersens of \$227,500 ("Strunzo loan") which was secured by a deed of trust against the Property and recorded on January 14, 2011 ("Strunzo DOT").

SUPPORTING EVIDENCE

Declaration of Pasquale P, Caiazza In Support Of Motion Of Defendant The Strunzo Development Corporation Of California For Summary Judgment ("Caiazza Declaration"), Paragraphs 4,5,and 17 , and Exhibit "1" thereto.

FACT NO. 9

At the time of making the Strunzo loan, Strunzo had no actual knowledge of any claim that the CP DOT was a lien on the Property.

SUPPORTING EVIDENCE

Caiazza Declaration, Paragraphs 14 and 15.

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FACT NO. 10

The express terms of the CP DOT authorize only the designated "Lender" to substitute the trustee of said deed of trust.

SUPPORTING EVIDENCE

Hilburg Declaration, Exhibit "3" thereto, Section 24.

FACT NO. 11

Section 24 of the CP DOT states that the Lender may "appoint a successor trustee to any Trustee appointed hereunder . . .".

SUPPORTING EVIDENCE

Hilburg Declaration, Exhibit "3" thereto, Section 24.

FACT NO. 12

Section 24 of the CP DOT states that the substitution of trustee "shall contain the name of the original Lender, Trustee and Borrower", which is true of the 2010 Substitution of Trustee and Full Reconveyance, but is not true of the 2009 Substitution of Trustee, as the latter does not contain the name of the original Lender.

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraph 29, Exhibit "3" thereto, Section 24 and Exhibits "4" and "6" thereto

FACT NO. 13

Section 24 of the CP DOT states: "This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution".

SUPPORTING EVIDENCE

Hilburg Declaration, Exhibit "3" thereto, Section 23.

FACT NO. 14

Section 23 of the CP DOT authorized the Lender to instruct the trustee to fully reconvey the CP DOT.

SUPPORTING EVIDENCE

Hilburg Declaration, Exhibit "3" thereto, Section 24.

FACT NO 15

A diligent and proper title search of the public records affecting title to the Property at the time of the Strunzo loan showed that the CP DOT had been fully reconveyed.

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraphs 22 and 24, and Paragraphs 1-43.

FACT NO. 16

A diligent and proper title search of the public records affecting title to the Property at the time of the Strunzo loan disclosed no recorded documents that would raise a duty of inquiry regarding validity of the 2010 Substitution of Trustee and Full Reconveyance.

SUPPORTING EVIDENCE

Hilburg Declaration, Paragraphs 25-42.

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FACT NO. 17

At the time of the Strunzo loan, Strunzo's agent and loan broker, Daniel Gonzalez, investigated the status of the CP DOT by inquiring about it to Christopher Petersen and to the legal department of Stewart Title Company of California, Inc., and was assured by them that the CP DOT had been fully released from the Property.

SUPPORTING EVIDENCE:

Declaration of Daniel M. Gonzalez In Support Of Motion Of The Strunzo Development Corporation Of California For Summary Judgment, Paragraphs 8-9; Caiazza declaration, Paragraphs 6-8.

LAW OFFICES OF MARY JEAN PEDNEAU
An unincorporated Law Firm

Dated: June 6, 2012

By: /s/ William R. Larr
MARY JEAN PEDNEAU
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WILLIAM R. LARR
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Attorneys for Defendant, The Strunzo Development Corporation of California aka Strunzo Development Corporation

PROOF OF SERVICE

I the undersigned declare, that I am over the age of 18 and not a party to this action. I am employed in the City of Corona, Riverside County, State of California. I am employed with and my business address is the Law Office of Mary Jean Pedneau, located at 2280 Wardlow Circle, Suite 280, Corona, California 92880-8400.

On June 6, 2012, I caused to be served the within document described as **STATEMENT OF UNCONTROVERTED FACTS IN SUPPORT OF DEFENDANT, THE STRUNZO DEVELOPMENT CORPORATION OF CALIFORNIA AKA STRUNZO DEVELOPMENT CORPORATION'S MOTION FOR SUMMARY JUDGMENT**, by placing the true copies thereof enclosed in sealed envelopes addressed as follows:

Peter M. Watson, Esq. SBN 258784
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In Pro Se for Defendants, Christopher M. Petersen, Carolina L. Petersen and CP Financial and CP Realty, Inc.

(X) **(BY MAIL)** I am "readily familiar" with the firms's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. Postal Service on that same day with the postage thereon fully prepaid at Corona, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

(X) **(BY ELECTRONIC SERVICE)** Pursuant to CM/EMS System, registration as CM/EMF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/EMF system sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's EC/ECF system.

(X) **(Federal)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made

EXECUTED on June 6, 2012, at Corona, California.

/s/ Roberta A. Comstock
 ROBERTA A. COMSTOCK